

THE CAL/OSHA
EMERGENCY
REGULATIONS:
WHAT
EMPLOYERS
NEED TO KNOW

www.hannabrophy.com
info@hannabrophy.com

PO Box 12488
Oakland, CA 94604

WRITTEN BY
MIKE MAZZONI, ESQ.

CONTRIBUTIONS BY
JEANNETTE HERRERA, ESQ.

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Cal/OSHA's board voted unanimously late last Thursday to expand regulations that force employers to do more to protect employees from COVID-19 at work. The move comes among fervent opposition from employer groups. These temporary emergency regulations adopted by the Board impose new obligations on all California employers not covered under 8 CCR section 5199 [Aerosol Transmissible Disease standard, or ATD standard, such as hospitals, skilled nursing, etc.], and the other exempted employers listed in the emergency regulations [i.e. places of employment with one employee and no public contact, employees working from home].

The New Regulations Have Four Major Highlights:

- [a]** Implementation of a COVID-19 prevention plan by all employers
- [b]** COVID-19 reporting requirements
- [c]** COVID-19 testing obligations of employers during an "outbreak"
- [d]** COVID-19 prevention in employer-provided housing and employer-provided transport.

The Written COVID-19 Prevention Plan:

The piece of the regulation that probably will have the most immediate impact on businesses around the state will be the obligation to implement and maintain a written "COVID-19 Prevention Program." Similar to the mandate under 8 CCR section 3203 for employers to maintain an Injury and Illness Prevention Program (IIPP), the emergency regulation requires that a written COVID-19 Prevention Program be prepared, implemented and maintained as well.

The major elements needed within a COVID-19 Prevention Program set forth in the new standard include the following:

- [1] a system for communicating about COVID-19 with employees;
- [2] a method of identifying and
- [3] correcting COVID-19 hazards;
- [4] a system for investigating cases in the workplace;
- [5] employee training on COVID-19; the implementation of
- [6] physical distancing and
- [7] face coverings
- [8] utilization of engineering and administrative controls;
- [9] recordkeeping protocols;
- [10] excluding COVID-19 cases from the workplace; and
- [11] return to work criteria.

Employers should immediately develop the above plan and make sure any existing plan is consistent with the new standards. Inserting this COVID-19 Prevention Plan into an already existing Injury and Illness Prevention Plan (IIPP) [*which is already mandated by 8 CCR section 3203*] is what many employers are choosing to do.

Recordkeeping, Notice Requirements and AB 685:

Notably, the regulation's recordkeeping requirements overlap those in Assembly Bill (AB) 685, which will be effective January 1, 2021.

The new standard also requires employers give notice of the potential COVID-19 exposure within one business day to all employees who may have been exposed, their authorized representatives, and independent contractors and other employers who were present during the high risk exposure period, which is more expansive than the AB 685 requirements.

AB 685 requires the notice to be written, while the new standard does not, and AB 685 requires all employees, as well as the "exclusive representative" of the employee who may have been exposed be notified. There are other more detailed notification requirements where the employer must work with local health departments and other agencies such as the Division of Cal/OSHA, in making sure they are notified as well, in the case of an outbreak.

Testing Requirements:

Another major obligation of employers is the standard's testing requirements. Where an employer suffers multiple COVID-19 infections or a COVID-19 outbreak as defined within 8 CCR section 3205.1(a), employers shall provide COVID-19 testing to all employees at the exposed workplace. ["Outbreak" per the emergency regs under 8 CCR section 3205.1(a) is defined as any "outbreak" identified by the local health department or 3 or more infections over a 14 day period; please note that an "outbreak" per SB 1159 and AB 685 may be defined differently].

This testing must be offered at no charge, during employee working hours, and immediately upon being covered by this outbreak definition. Employers must then offer this same testing again one week later for the same employees. After the first two required COVID-19 tests, employers shall provide continuous COVID-19 testing of employees who remain at the workplace at least once per week, or provide testing more frequently if recommended by the local health department.

There is also an imposition of heightened testing requirements where the worksite experiences 20 or more cases within a 30-day period.

Cost to Employers:

Employers will have to bear the costs of these new requirements and will have to establish a relationship with a provider of COVID-19 testing in order to ensure compliance. They may also have to pay for lost time at work in order for the employee to undergo testing, and any mileage involved.

Finally, the regulation imposes heightened requirements on employers who offer housing and transportation to their employees. Notable inclusions are the requirements that employer-provided housing ensure spacing of six feet of distancing between beds, and that employer-provided transportation provide all passengers distancing of "at least three feet in all directions." These standards were pushed by advocates for migrant farmworkers, where outbreaks in employer provided housing was a concern.

Timeline for Employers to Comply:

There is no grace period for California employers to brace for the enactment of these new standards. The Office of Administrative Law [OAL] has already adopted the proposed regulations from the Board as of December 1, 2020. Therefore, these standards are now in effect, and will be in effect for the next 180 days, unless readopted for up to two consecutive 90 day periods.

Employers need to make sure they are in compliance to avoid any potential penalties or citations from Cal/OSHA. While DOSH Chief Doug Parker did comment that “[s]ome employers are going to need more time,” to comply with the new regulation, taking action now to implement the regulation’s mandates will ensure that employers are safeguarded.

With logistical and financial hurdles to jump over for many businesses during the pandemic, additional guidelines and regulations to follow may seem daunting. Working with skilled and experienced counsel at Hanna Brophy can assist your business with implementing and maintaining these new standards in an ever changing landscape, and allow you some piece of mind in these uncertain times.

Feel free to contact any of the Cal/OSHA team at [Hanna Brophy](#) for any questions or concerns.